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HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 722

MARY D. CAIN AND MARY LOU BUTLER,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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SUPREME COURT OF THE UNITED STATES

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vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, Mary D. Cain and Mary Lou Butler pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on March 19, 1954. The United States Court of Appeals granted a stay of its mandate on April 1, 1954.

Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit is reported in —— F. 2nd —— Advance

Sheet published April —, 1954, and appears in the certified transcript of the record at page 32.

Jurisdiction

The jurisdiction of this Court is invoked under 28 USCA 1254 (1). The judgment of the United States Court of Appeals to be reviewed was entered on March 19, 1954 (R. 37).

Statement of the Matter Involved

The United States of America brought this action in the United States District Court for the Southern District of Mississippi to enforce a collection of unpaid taxes imposed by the Self Employment Contributions Act [1] upon the self employment income of petitioner Mary D. Cain, earned in the year 1951 in the operation by Mrs. Cain of a newspaper in Pike County, Mississippi, known as the Summit Sun. The bill sought foreclosure of the government's lien said to exist upon the newspaper property, and petitioner Mary Lou Butler, as transferee thereof, was made a party defendant. The total amount of Mrs. Cain's other income taxes were paid and were not in issue.

The defendants answered, admitting the material facts alleged, but denying liability for the tax, urging that the taxes sought to be collected were illegal exactions imposed by the Congress not in the exercise of the taxing power but in the exercise of an unconstitutional exertion of a power not delegated by, but reserved to, and in, the States.

The facts were stipulated at the trial and the District Judge, relying upon *Helvering* v. *Davis*, 301 U. S. 619, 57 S. Ct. 904; *Chas. C. Steward Mach. Co.* v. *Davis*, 301 U. S.

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[1] Chapter 1, Subchapter "E", "Tax on Self-Employment Income", 26 USCA, 1946 Cum. Supp. V., Secs. 480-481-482.

548, 57 S. Ct. 883; and *Abney, et vir* v. *Campbell, Jr.*, 206 F. (2) 836; and finding no distinction between the facts at issue and those in the cases cited as controlling, held:

> "Under the authorities heretofore mentioned the exacted contribution is a tax." (R. 22) . . . "It is now well settled that providing a method of supporting the aged is a duty of (the Federal) government . . ." (R. 18) (Inclusion in parenthesis ours)

The United States Court of Appeals, however, agreed with appellants, petitioners here, that in the three prior cases cited by the District Judge "the actual question this case presents . . . was not presented or decided" (R. 35, Par. 2). The court nonetheless held that the challenged statutes did not offend the federal constitution.

Questions Presented

Whether the exactions imposed under the Self Employment Contributions Act, and appropriated in advance under Title II of the Social Security Act [1] to provide compulsory insurance benefits to self employed persons, as defined, constitute an abuse of Article 1, Sec. 8 of the Constitution of the United States and an infringement of the 10th Amendment to the Constitution of the United States.

Statutes and Constitutional Provisions Involved

The pertinent provisions of the Constitution of the United States, the Self Employment Contributions Act, and the Social Security Act, as amended, are set forth in the Appendix.

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[1] Sec. 201 (a) (as amended by Sec. 201, Social Security Act Amendments of 1939, Chapt. 666, 53 Stat. 1360, and Sec. 109 (a) of the Social Security Act Amendments of 1950, Chapt. 809, 64 Stat. 477).

Specification of Errors To Be Urged

The United States Court of Appeals erred:

(1) In holding that the exactions and appropriations in question were enacted within the scope of the taxing and spending powers conferred upon Congress by Article 1, Sec. 8 of the Constitution of the United States.

(2) In holding that the exactions and appropriations in question do not constitute an invasion of powers reserved to the States and to the people under the 10th Amendment of the Constitution of the United States.

(3) In affirming the judgment of the United States District Court.

Reasons for Granting the Writ

I

This Case Raises Important Questions of Federal Law Which Have Not Been, but Should Be, Settled by This Court

(A) Finding in the years 1933 and 1934 a nationwide condition of critical urgency among employees in the United States, Congress directed the passage of measures designed to protect this class of workers from the existing hazards of old age and unemployment. In the *Davis* cases, *supra*, these laws were upheld as enactments within the range of permissible congressional power and discretion, Congress having found among the nation's workers a condition of "extreme crisis" of nationwide scope and importance.

With deference, however, we submit that the effect of these decisions as precedent is rigidly controlled by the principle announced in *Helvering* v. *Davis:*

> "Nor is the concept of the general welfare static . . . *What is critical or urgent changes with the times.*" supra, page 908-909. (Emphasis ours)

It becomes highly important, therefore, for this court to determine whether the measures here challenged, extending as they do, to an entirely new class of the population and being enacted twenty years after the great recession at the highest level of the social and economic development of the nation are an expedient and a regulation within the bounds of federal power. The test of the general welfare as a flexible concept must here be applied to this new legislation in the light of the present socio-economic situation of the nation.

(B) The distinctions present in this case which furnish new and important questions of constitutional law were recognized by the United States Court of Appeals:

> "While we are in agreement with appellee that the exactions in question here are taxes constitutionally and legally laid and collectible, we agree with appellants that the question presented here, though the answer to it is in essence and in substance the same, is in several aspects of it a different one from that presented in the three prior cases" (R. 35).

Petitioners urge that the constitutional questions presented here for the first time on these facts be finally settled and determined by the court.

(C) The emphasis placed by both courts below on the authority of *Helvering* v. *Davis, supra,* to support the extension of compulsory insurance coverage to self employers presents for determination whether necessary general powers over all situations created by a widespread similarity of local conditions are actually vested in Congress under the Constitution. In this regard the decision of the court in *Carter* v. *Carter Coal Co.*, 298 U. S. 328, 56 S. Ct. 855, 858, decided May 18, 1936, and the *Davis* case, decided May 24, 1937, appear to be in conflict.

Nor, with deference, can we find authority for the proposition announced by the District Court (R. 18) and approved

by the United States Circuit Court of Appeals (R. 37), that the Federal Government is, under the constitution, burdened with the specific and unqualified duty to support all of the aged throughout the United States.

Whether these doctrines are consistent with the fundamental law is a question which should now be settled.

II

The Decision Is in Conflict with Other Decisions of this Court

The opinion of the Circuit Court of Appeals contains the inference that if Congress may lawfully impose an additional tax on the income of self employed persons, it matters not whether the avowed object for which the tax is laid, and to which its revenue is appropriated in advance under the same article of legislation, is one beyond the scope of federal power (R. 36-37). In this regard we submit, with deference, that the opinion is directly in conflict with the principles announced in the following decisions of this court: *United States* v. *Butler*, 296 U. S. 401, 56 S. Ct. 312; *Child Labor Tax Case*, 259 U. S. 20, 37, 42 S. Ct. 449, 66 L. Ed. 817; *Hill* v. *Wallace*, 259 U. S. 44, 42 S. Ct. 453, 66 L. Ed. 822; *Carter* v. *Carter Coal Company*, 298 U. S. 238, 56 S. Ct. 855; *Linder* v. *United States*, 268 U. S. 819, 290 Fed. 173; *Gibbons* v. *Ogden*, 9 Wh. 1, 6 L. Ed. 23.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding that Court to certify and to send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case numbered and entitled on its docket 14,800; that the said judgment of the United States Court of Appeals for the

Fifth Circuit may be reversed by this Court; and that your petitioners may have such other and further relief in the premises as may seem just and proper.

MARY D. CAIN and
MARY LOU BUTLER,
Petitioners.

By NORMAN B. GILLIS, JR.,
Attorney for Petitioners.
WILLIAM SAUNDERS HENLEY,
Attorney at Law.

APPENDIX

Article I

Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

APPENDIX "B"

Pertinent Sections of the Internal Revenue Code

CHAPTER 1—INCOME TAX

SUBCHAPTER E* (As added by Sec. 208 (a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477)—TAX ON SELF-EMPLOYMENT INCOME.

SEC. 480. RATE OF TAX.

In addition to other taxes, there shall be levied, collected, and paid for each taxable year beginning after December 31, 1950, upon the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1950, and before January 1, 1954, the tax shall be equal to 2¼ per centum of the amount of the self-employment income for such taxable year.

(26 U. S. C. 1946 ed., Supp. V, Sec. 480.)

SEC. 481. DEFINITIONS. (As amended by Sec. 221 (j) (i), Revenue Act of 1950, c. 994, 64 Stat. 906, and Sec. 325(d), Revenue Act of 1951, c. 521, 65 Stat. 452.)

For the purposes of this subchapter—

(a) Net Earnings from Self-Employment.—The term "net earnings from self-employment" means the gross in-

come derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate (including personal property leased with the real estate) and deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer;

(2) There shall be excluded income derived from any trade or business in which, if the trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 1426 (h); and there shall be excluded all deductions attributable to such income;

(3) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 25(a)) are received in the course of a trade or business as a dealer in stocks or securities;

(4) There shall be excluded any gain or loss (A) which is considered as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber or coal if section 117(j) is applicable to such gain or loss or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year nor (ii) property held pri-

marily for sale to customers in the ordinary course of the trade or business;

(5) The deduction for net operating losses provided in section 23(s) shall not be allowed;

(6) (A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(7) (A) In the case of any taxable year beginning before the effective date specified in section 3810, the term "possession of the United States" when used in section 251 with respect to citizens of the United States shall include Puerto Rico; (B) In the case of any taxable year beginning on or after the effective date specified in section 3810, a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 116(1). If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of

the partnership (even though beginning prior to January 1, 1951) ending within or with his taxable year.

(b) Self-Employment Income.—The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year beginning after December 31, 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of: (A) $3,600, minus (B) the amount of the wages paid to such individual during the taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For the purposes of clause (1) the term "wages" includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees) as would be wages under section 1426(a) if such services constituted employment under section 1426(b). In the case of any taxable year beginning prior to the effective date specified in section 3810, an individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) and who is not a resident of the United States or of the Virgin Islands during such taxable year shall be considered, for the purposes of this subchapter, as a nonresident alien individual. An individual who is not a citizen of the United States but who is a resident of the Virgin Islands or (after the effective date specified in section 3810) a resident of Puerto Rico shall not, for the purposes of this subchapter, be considered to be a nonresident alien individual.

(c) Trade or Business.—The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23, except that such term shall not include—

(1) The performance of the functions of a public office;

(2) The performance of service by an individual as an employee (other than service described in section 1426(b) (16) (B) performed by an individual who has attained the age of eighteen);

(3) The performance of service by an individual as an employee or employee representative as defined in section 1532;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(5) The performance of service by an individual in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, funeral director, or professional engineer; or the performance of such service by a partnership.

(d) Employee and Wages.—The term "employee" and the term "wages" shall have the same meaning as when used in subchapter A of chapter 9.

(26 U. S. C. 1946 ed., Supp. V, Sec. 481.)

SEC. 482. MISCELLANEOUS PROVISIONS.

(a) Returns.—Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return containing such information for the purpose of carrying out the provisions of this subchapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Such return shall be considered a return required under section 51(a). In the case of a husband and wife filing a joint return under section 51(b), the tax imposed by this subchapter shall not be computed on the aggregate income but shall be the sum of the taxes computed

under this subchapter on the separate self-employment income of each spouse.

(26 U. S. C. 1946 ed., Supp. V, Sec. 482.)

Social Security Act, c. 531, 49 Stat. 620:

SEC. 201.(a) (As amended by Sec. 201, Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, and Sec. 109(a), Social Security Act Amendments of 1950, c. 809, 64 Stat. 477).

There is created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund" (hereinafter in this subchapter called the "Trust Fund"). The Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old Age Reserve Account and the amount standing to the credit of the Old Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Trust Fund, and, in addition, such amounts as may be appropriated to, or deposited in, the Trust Fund. There is appropriated to the Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(4) The taxes imposed by subchapter E of chapter 1 of Title 26 with respect to self-employment income (as defined in section 481 of Title 26) reported to the Commissioner of Internal Revenue on tax returns under such subchapter, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter to such self-employment income, which self-employment income shall be certified by the Federal Security Administrator on the basis of the records of self-employment income established and maintained by the Administrator in accordance with such returns. The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the

Trust Fund on the basis of estimates by the Secretary of the Treasury of the taxes, referred to in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the amounts of the taxes referred to in such clauses.

(42 U. S. C. 1946 ed., Supp. IV, Sec. 401)

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In the Supreme Court of the United States

October Term, 1953

No. 722

MARY D. CAIN AND MARY LOU BUTLER,
PETITIONERS
v.
UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 13–25) is reported at 113 F. Supp. 304. The opinion of the Court of Appeals (R. 32–37) is reported at 211 F. 2d 375.

JURISDICTION

The judgment of the Court of Appeals was entered on March 19, 1954. (R. 37.) The petition for a writ of certiorari was filed on April 26, 1954. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the Court of Appeals erred in upholding the constitutional validity of the Self-Employment Contributions Act.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

These are set forth in the Appendix, *infra*, pp. 7–15.

STATEMENT

This proceeding challenges the constitutionality of the Self-Employment Contributions Act (Internal Revenue Code, Sections 480–482) which, subject to certain exceptions and limitations, imposes a tax upon the self-employment income of every individual.

The agreed statement of facts (R. 2–13) may be summarized as follows:

The United States filed suit to enforce its tax liens against the property of both taxpayer Mary D. Cain, and her niece, Mary Lou Butler, as transferee of the assets of taxpayer, to satisfy unpaid taxes on the self-employment income of taxpayer for the calendar year 1951, computed in accordance with the provisions of the Self-Employment Contributions Act. (R. 2, 5–7, 14.)

Although taxpayer filed her individual income tax return, Form 1040, for the calendar year 1951 and paid the tax on the income reported thereon, including that from the operation of a newspaper business owned by her, she did not compute and pay the tax on the self-employment

income imposed by the Self-Employment Contributions Act, but rather, in a letter attached to her return, protested any possible liability therefor. (R. 2–3.)

Thereafter, the Commissioner assessed a deficiency against the taxpayer in the amount of $42.87 representing the self-employment income tax of $41.32 and interest in the amount of $1.55, following which the necessary and proper steps were taken which resulted in a lien against taxpayer's property. (R. 3–4.)

Meanwhile, taxpayer transferred to her niece, Mary Lou Butler, all of the assets used in the operation of her newspaper business, although she continued to exercise complete authority over the affairs of the newspaper and continued her status as a self-employed person. The transfer left taxpayer insolvent and without sufficient assets to pay the claim of the United States for the self-employment income tax and interest assessed against her. Accordingly, an assessment was made against Mary Lou Butler, as transferee, and a lien obtained in due course. (R. 4–5.)

In response to the Government's suit, taxpayer and her transferee, while admitting the facts, denied liability for the tax on the sole ground that the statute involved was unconstitutional in that it did not constitute a valid exercise of the taxing power of Congress under Article I, Section 8 of the Constitution of the United States, and in-

fringed upon Amendment 10 of the Constitution. (R. 7–11, 30, Pet. 4.) Both courts below upheld the constitutionality of the challenged statute. (R. 24, 35.)

ARGUMENT

The Self-Employment Contributions Act (Appendix, *infra*, pp. 7–13), the constitutionality of which is challenged by taxpayers herein, was added to Chapter 1 of the Internal Revenue Code relating to income tax by Section 208 (a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477. By imposing the tax on self-employment income and by amending the provisions of the Social Security Act,[1] Congress extended to self-employed persons, with certain exceptions, the benefits of the Federal old age and survivor's insurance scheme.

The basic law, the Social Security Act, was upheld as valid by this Court in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, and *Helvering* v. *Davis*, 301 U. S. 619. A complete answer to the contentions made in support of the attack upon the particular taxing Act involved in this case is to be found, either expressly or by implication, in the decisions of this Court in those two cases. Accordingly, both courts below were clearly correct in holding that the principles applied in those cases support the constitutionality of the Self-Employment Contributions Act.

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[1] C. 531, 49 Stat. 620.

Other portions of the 1950 Amendments (Sections 201 and 203) which imposed taxes with respect to previously exempted domestic service in private homes were recently upheld as constitutional in *Abney* v. *Campbell*, 206 F. 2d 836 (C. A. 5th), certiorari denied, 346 U. S. 924. Whether viewed as an excise tax, as the District Court regarded it, or as the levy of an additional income tax, as the Court of Appeals considered it,[*] there is no merit to taxpayers' contentions that the statute contravenes the Constitution. As was held in the *Steward Machine* case, the end sought to be attained by the social security legislation is clearly within the federal legislative powers. The Self-Employment Contributions Act, as an integral part of that legislation, is not beyond the scope of the taxing power of Congress. The decision below plainly is not in conflict with *United States* v. *Butler*, 297 U. S. 1, or any of the other cases cited by taxpayers. (Pet. 6.)

CONCLUSION

The decision below is correct; there is no conflict of decisions, and no question warranting re-

[*] See report of the House Ways and Means Committee (H. Rep. No. 1300, 81st Cong., 1st Sess., p. 135; 1950-2 Cum. Bull. 255, 293); report of the Senate Committee on Finance (S. Rep. No. 1669, 81st Cong., 2d Sess., p. 153; 1950-2 Cum. Bull. 302, 352); and the Conference Report (H. Conference Rep. No. 2771, 81st Cong., 2d Sess., p. 112; 1950-2 Cum. Bull. 365, 376).

view by this Court. The petition should be denied.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.
ELLIS N. SLACK,
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GEORGE F. LYNCH,
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JUNE 1954.

APPENDIX

Constitution of the United States:

ARTICLE I

* * * * *

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Internal Revenue Code:

SUBTITLE A—TAXES SUBJECT TO THE JURISDICTION OF THE TAX COURT OF THE UNITED STATES

CHAPTER 1—INCOME TAX

* * * * *

SUBCHAPTER E[1] (As added by Sec. 208 (a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477)—TAX ON SELF-EMPLOYMENT INCOME.

[1] This subchapter was given the short title of "Self-Employment Contributions Act" by Sec. 482 (b) of the Code.

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SEC. 480. RATE OF TAX.

In addition to other taxes, there shall be levied, collected, and paid for each taxable year beginning after December 31, 1950, upon the self-employment income of every individual, a tax as follows:

(1) In the case of any taxable year beginning after December 31, 1950, and before January 1, 1954, the tax shal be equal to 2¼ per centum of the amount of the self-employment income for such taxable year.

* * * * *

(26 U. S. C. 1946 ed., Supp. V, Sec. 480.)

SEC. 481. DEFINITIONS. (As amended by Sec. 221 (j) (1), Revenue Act of 1950, c. 994, 64 Stat. 906, and Sec. 325 (d), Revenue Act of 1951, c. 521, 65 Stat. 452.)

For the purposes of this subchapter—

(a) *Net Earnings from Self-Employment.*—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate (including personal property leased with the real estate) and deductions

attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer;

(2) There shall be excluded income derived from any trade or business in which, if the trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 1426 (h); and there shall be excluded all deductions attributable to such income;

(3) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 25 (a)) are received in the course of a trade or business as a dealer in stocks or securities;

(4) There shall be excluded any gain or loss (A) which is considered as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber or coal if section 117 (j) is applicable to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(5) The deduction for net operating losses provided in section 23 (s) shall not be allowed;

(6) (A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(7) (A) In the case of any taxable year beginning before the effective date specified in section 3810, the term "possession of the United States" when used in section 251 with respect to citizens of the United States shall include Puerto Rico;

(B) In the case of any taxable year beginning on or after the effective date specified in section 3810, a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 116 (l). If the taxable year of a partner is different

from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to January 1, 1951) ending within or with his taxable year.

(b) *Self-Employment Income.*—The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year beginning after December 31, 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of: (A) $3,600, minus (B) the amount of the wages paid to such individual during the taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For the purposes of clause (1) the term "wages" includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees) as would be wages under section 1426 (a) if such services constituted employment under section 1426 (b). In the case of any taxable year beginning prior to the effective date specified in section 3810, an individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) and who is not a resident of the United States or of the Virgin Islands during such taxable year shall be con-

sidered, for the purposes of this subchapter, as a nonresident alien individual. An individual who is not a citizen of the United States but who is a resident of the Virgin Islands or (after the effective date specified in section 3810) a resident of Puerto Rico shall not, for the purposes of this subchapter, be considered to be a nonresident alien individual.

(c) *Trade or Business.*—The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23, except that such term shall not include—

(1) The performance of the functions of a public office;

(2) The performance of service by an individual as an employee (other than service described in section 1426 (b) (16) (B) performed by an individual who has attained the age of eighteen);

(3) The performance of service by an individual as an employee or employee representative as defined in section 1532;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(5) The performance of service by an individual in the exercise of his profession as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, fu-

neral director, or professional engineer; or the performance of such service by a partnership.

(d) *Employee and Wages.*—The term "employee" and the term "wages" shall have the same meaning as when used in subchapter A of chapter 9.

(26 U. S. C. 1946 ed., Supp. V, Sec. 481.)

SEC. 482. MISCELLANEOUS PROVISIONS.

(a) *Returns.*—Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return containing such information for the purpose of carrying out the provisions of this subchapter as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Such return shall be considered a return required under section 51 (a). In the case of a husband and wife filing a joint return under section 51 (b), the tax imposed by this subchapter shall not be computed on the aggregate income but shall be the sum of the taxes computed under this subchapter on the separate self-employment income of each spouse.

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(26 U. S. C. 1946 ed., Supp. V, Sec. 482.)

Social Security Act, c. 531, 49 Stat. 620:

SEC. 201. (a) (As amended by Sec. 201, Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, and Sec. 109 (a), Social Security Act Amendments of 1950, c. 809, 64 Stat. 477).

There is created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund" (herein-

after in this subchapter called the "Trust Fund"). The Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old Age Reserve Account and the amount standing to the credit of the Old Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Trust Fund, and, in addition, such amounts as may be appropriated to, or deposited in, the Trust Fund. There is appropriated to the Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

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(4) The taxes imposed by subchapter E of chapter 1 of [Title 26] with respect to self-employment income (as defined in section 481 of [Title 26]) reported to the Commissioner of Internal Revenue on tax returns under such subchapter, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter to such self-employment income, which self-employment income shall be certified by the Federal Security Administrator on the basis of the records of self-employment income established and maintained by the Administrator in accordance with such returns.

The amounts appropriated by clauses (3) and (4) [of this subsection] shall be transferred from time to time from the general fund in the Treasury to the Trust Fund on the basis of estimates by the Secretary of the Treasury of the taxes, referred to in clauses

(3) and (4) [of this subsection], paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the amounts of the taxes referred to in such clauses.

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(42 U. S. C. 1946 ed., Supps. IV and V, Sec. 401.)

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